

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent:	Vann <i>et al.</i>	Confirmation No.:	2185
Patent No.:	6,982,149 B2	Serial No.:	10/602,900
Issued:	January 3, 2006	Filing Date:	June 23, 2003
For:	<i>Fiber Array and Methods for Using and Making Same</i>	Attorney Docket No:	61193-0049-US

REQUEST FOR CERTIFICATE OF CORRECTION UNDER MPEP §1481.03(II)(B)
AND PETITION FOR UNINTENTIONALLY DELAYED CLAIM FOR
PRIORITY UNDER 37 CFR 1.78 (A)(3)

ATTN: Certificate of Correction Branch
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir/Madam:

Patentee recently discovered that the priority claim as shown in item 63 of the subject patent, U.S. Patent No. 6,982,149, omits an intervening application. The current priority claim reads as follows:

“Continuation of application No. 09/590,761, filed on Jun. 8, 2000, now
Pat. No. 6,649,404, which is a continuation-in-part of application No.
09/227,799, filed on Jan. 8, 1999, now abandoned.”

However, Application No. 09/590,761 is actually a divisional application of Application No. 09/479,181, and that prior application (Application No. 09/479,181) is the continuation-in-part of Application No. 09/227,799. Therefore, Patentee is requesting that the claim of priority be corrected to include Application No. 09/479,181 and to read as follows:

“Continuation of application No. 09/590,761, filed on Jun. 8, 2000, now Pat. No. 6,649,404, which is a division of application No. 09/479,181 filed on Jan. 7, 2000, now Pat. No. 6,635,470, which is a continuation-in-part of application No. 09/227,799, filed on Jan. 8, 1999, now abandoned.”

To correct the above error in the claim of priority, three conditions must be met according to MPEP §1481.03 (II)(B):

- (A) All requirements set forth in 37 CFR 1.78(a)(1) must have been met in the application which became the patent to be corrected;
- (B) It must be clear from the record of the patent and the parent application(s) that priority is appropriate; and
- (C) A grantable petition to accept an unintentionally delayed claim for benefit of a prior application must be filed, including a surcharge as set forth in 37 CFR 1.17(t), as required by 37 C.F.R. § 1.78(a)(3).

Patentee believes that all of the above conditions under § 1481.03(II)(B) have been satisfied because of the reasons explained below.

(A) All Requirements Set Forth in 37 CFR §1.78(a)(1) Have Been Met

In order for an application to claim the benefit of a prior-filed co-pending nonprovisional application, 37 CFR §1.78(a)(1) requires the following:

- (1) Each prior-filed application must name as an inventor at least one inventor named in the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112; and
- (2) Each prior-filed application must be entitled to a filing date as set forth in § 1.53(b) or §1.53(d) and have paid therein the basic filing fee set forth in §1.16 within the pendency of the application.

The first requirement is met because there is at least one common inventor (e.g., Vann) in the present patent (Pat. No. 6,982,149) and the prior-filed applications as provided by the first paragraph of 35 U.S.C. § 112. The second requirement is met because the Patentee has complied with the requirements set forth in §1.53(b) and have paid the filing fee set forth in §1.16 during the pendency of the application, noting that the subject patent has already been issued. Furthermore, the Patentee is not seeking to claim an earlier priority date or to add new matter. Patentee is merely requesting the correction of a clerical error in the priority chain of the subject patent that omits reference to an intervening application.

(B) It is Clear from the Record of the Patent and the Parent Application(s) that Priority is Appropriate

The correction of the clerical error described above is clearly supported by the record of the patent and the parent applications. There are three parent applications, including the omitted application:

- Application No. 09/590,751 (now U.S. Patent No. 6,649,404);
- Application No. 09/479,181 (the omitted application); and
- Application No. 09/227,799 (the earliest filed application).

Application No. 09/590,751 is intervening between the subject patent and the application omitted (Application No. 09/479,181) in the claim of priority. The Related U.S. Application Data on the face of this intervening patent (Application No. 09/590,751) includes a claim of priority to the omitted application (Application No. 09/479,181) and states that it (i.e., the intervening patent) is a divisional application of the omitted application (Application No. 09/479,181) and that the omitted application is a continuation-in-part of the earliest filed application (Application No. 09/227,799). (Although, not part of the claim of priority for the subject patent, the Related U.S. Application Data on the face of U.S. Patent No. 6,573,089 also references the omitted application and states that the intervening parent application (Application No. 09/590,751) is a divisional application of the omitted application (Application No. 09/479,181) and that the omitted application is a continuation-in-part of the earliest filed application (Application No. 09/227,799).) Therefore, it is clear that the requested change to the claim of priority is appropriate based upon the parent applications.

Further, it is clear from the record of the subject patent that a claim of priority through each intervening application to the earliest filed application (Application No. 09/227,799) is appropriate. The originally filed application, in the cover letter sent with the initial filing, requested an amendment to the first line of the patent application to recite a claim of priority to Application No. 09/590,761. Further the first line of the patent application itself recited a claim of priority to Application No. 09/227,799 (the earliest filed application). Based upon these explicit claims of priority, including one to the earliest filed application, it is clear that a claim of priority through each intervening application and to the earliest filed application was intended. Therefore, it is clear that an explicit reference to the omitted application was the result of a clerical error and that the requested change to the claim of priority based upon the subject patent is appropriate. Moreover, based upon the record of the subject patent and the parent applications together, the requested change to the claim of priority is appropriate.

(C) **A Grantable Petition to Accept an Unintentionally Delayed Claim for Benefit of a Prior Application Must be Filed Pursuant to 37 CFR § 1.78(a)(3)**

Patentee hereby petitions for acceptance of an unintentionally delayed claim for benefit pursuant to 37 CFR§ 1.78(a)(3). 37 CFR 1.78(a)(3) requires the following:

- “(i) The reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section to the prior filed application, unless previously submitted;
- (ii) The surcharge set forth in § 1.17(t); and
- (iii) A statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was intentional. The Director may require additional information where there is a question whether the delay was unintentional.”

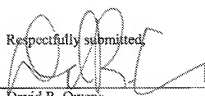
The required reference to the prior-filed application is included in the boxed section above. The Commissioner is hereby authorized to charge the \$1,410.00 fee, set forth in 37 CFR

1.17(t), or any additional required fees, to Morgan, Lewis & Bockius LLP Deposit Account No. 50-0310 (order no. 61193-0049). Patentee hereby asserts that the entire delay between the date the claim was due and the date the claim was filed was unintentional. Patentee, therefore, believes that all requirements under 37 C.F.R. § 1.78(a)(3) have been satisfied and requests that this petition be granted.

Since all requirements under MPEP §1481.04(II)(B) have been met, Patentee requests correction of the clerical error in the priority data of the subject patent in the manner described above. Submitted with this paper is a Certificate of Correction for this purpose.

Date: February 7, 2008

Respectfully submitted,


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